

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHAD JERMEL PEOPLES,

Defendant-Appellant.

UNPUBLISHED

August 17, 2004

No. 248155

Wayne Circuit Court

LC No. 02-012092-01

Before: Hoekstra, P.J., and Cooper and Kelly, JJ.

PER CURIAM.

Defendant Chad Jermel Peoples appeals as of right his jury trial convictions for unarmed robbery¹ and carjacking.² Defendant was sentenced as a third habitual offender to 202 to 480 months' imprisonment for each conviction. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

I. Facts

On the afternoon of September 14, 2002, a Lexus belonging to Richard Burton was stolen from his driveway. Mr. Burton was at his home with an employee, Michael Smith. Mr. Burton paid Mr. Smith \$600 cash and left Mr. Smith sitting in the car while he went inside to wash his hands. Defendant approached the vehicle. Defendant pulled up his shirt, put his hand on a gun in the waist of his pants, and demanded Mr. Smith's money and the car. Mr. Smith exited the vehicle, and defendant got in and drove away.

Three days later, Detroit police officers Corey Garrison and Raymond Smith saw defendant driving a Lexus. Remembering that a Lexus had been reported stolen in the neighborhood, Officer Garrison ran a LEIN check on the car and learned that it was the stolen vehicle. At the same time, defendant walked up to the police car to ask for directions. Defendant tried to run away when the officers attempted to place him under arrest. He was eventually apprehended and arrested.

¹ MCL 750.530.

² MCL 750.529a.

II. Judicial Misconduct

Defendant alleges that the trial judge improperly summarized the testimony of a prosecution witness for the jury. As defendant failed to object at trial, our review is limited to plain error affecting defendant's substantial rights.³

At the start of the second day of trial, Judge Daniel Ryan summarized the prior day's testimony. He specifically stated, "All right. Yesterday, ladies and gentlemen, to summarize, we heard from two civilian witnesses. First witness we heard from was Michael Smith and he testified as to what transpired in the driveway."⁴ Defendant argues that this statement improperly bolstered Mr. Smith's credibility.

A judge may not impress upon the jury his or her views regarding the merits of the case; however, there are no fixed guidelines on what a trial judge may or may not say.⁵ The Code of Judicial Conduct offers the following standard:

A judge may properly intervene in a trial of a case to promote expedition, and prevent unnecessary waste of time, or to clear up some obscurity, but the judge should bear in mind that undue interference, impatience, or participation in the examination of witnesses, or a severe attitude on the judge's part toward witnesses . . . may tend to prevent the proper presentation of the case, or the ascertainment of truth in respect thereto.^[6]

In evaluating a judge's actions or speech during trial, we must determine if the judge impaired that balance of judicial impartiality necessary to a fair hearing.⁷

Judge Ryan's summary of Mr. Smith's testimony was neutral and did not suggest to the jury that it should believe one witness over another. The statements reminded the jury of the testimony heard the day before. Judge Ryan's words did not deprive defendant of a fair trial.⁸

³ *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999).

⁴ Trial Transcript, January 15, 2003, pp 4-5.

⁵ *People v Young*, 364 Mich 554, 559; 111 NW2d 870 (1961); *People v Withrow*, 26 Mich App 679, 685; 182 NW2d 775 (1970).

⁶ Code of Judicial Conduct, Canon 3(A)(B).

⁷ *City of Lansing v Hartsuff*, 213 Mich App 338, 349-350; 539 NW2d 781 (1995), quoting *People v Collier*, 168 Mich App 687, 698; 425 NW2d 118 (1988); *People v Wilson*, 21 Mich App 36, 38; 174 NW2d 914 (1969).

⁸ Defendant relies on several cases that are easily distinguishable from the instant case. See *People v Conyers*, 194 Mich App 395; 487 NW2d 787 (1992); *People v Sterling*, 154 Mich App 223; 397 NW2d 182 (1986); *People v Redfern*, 71 Mich App 452; 248 NW2d 582 (1976); *People v Smith*, 64 Mich App 263; 235 NW2d 754 (1975). In those cases, the judges questioned witnesses at great length and made their opinions as to the credibility of the witnesses quite clear

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III. Sentencing

Defendant also claims that he is entitled to resentencing, as the trial court erroneously scored twenty-five points for OV 19. The trial court's scoring determinations will be upheld if there is any evidence to support its decision.⁹ OV 19 is scored twenty-five points when "the offender by his or her conduct threatened the security of a penal institution or court."¹⁰

The trial court assigned twenty-five points based on defendant's failure to appear in court on the third day of his trial when the verdict was read. A bench warrant was issued and defendant was taken into custody. Defendant ran from the courtroom and escaped from custody the same day. The trial court found that the security of the court was threatened when defendant, a man accused of an assaultive crime, fled from the courtroom. As there is evidence to support the judge's findings, this Court will not disturb his sentencing decision.

Defendant contends in propria persona that the trial court erroneously scored ten points for OV 13. OV 13 is scored ten points when "[t]he offense was part of a pattern of felonious criminal activity involving a combination of three or more crimes against a person or property."¹¹ Defendant objected to the score of OV 13 at his sentencing hearing on various grounds, including that the score was based on previous juvenile adjudications that are not considered felonies. However, on appeal, defendant contends that the trial court improperly considered a juvenile adjudication procured without the benefit of counsel. As defendant has not properly preserved this issue for appeal, our review is limited to plain error affecting substantial rights.¹²

Defendant correctly asserts that a trial court may not consider juvenile adjudications obtained without the benefit of counsel in determining a defendant's sentence.¹³ However, defendant failed to meet his burden of proof by presenting "prima facie proof that a prior conviction or juvenile adjudication was obtained in violation of his constitutional right to counsel."¹⁴ Therefore, the trial court properly scored OV 13 ten points.

Defendant further contends in propria persona that the trial court improperly sentenced him as a third habitual offender by considering two prior adult convictions entered as the result of a single trial. As defendant failed to preserve this issue by objecting to being sentenced as an

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to the jury either through direct words or inappropriate behavior. The neutral statement made in this case clearly does not rise to that level.

⁹ *People v Hornsby*, 251 Mich App 462, 468; 650 NW2d 700 (2002).

¹⁰ MCL 777.49(a).

¹¹ MCL 777.43(1)(c).

¹² *People v Callon*, 256 Mich App 312, 332; 662 NW2d 501 (2003).

¹³ *People v Daoust*, 228 Mich App 1, 17-18; 577 NW2d 179 (1998).

¹⁴ *Id.* at 18. In fact, the juvenile adjudications listed in defendant's presentence investigation report indicate that counsel was present at those proceedings.

habitual offender, our review is limited to plain error affecting substantial rights.¹⁵ “Multiple convictions obtained in the same judicial proceedings may count as separate convictions for purposes of the habitual offender statutes only if those convictions arise out of separate criminal transactions.”¹⁶ However, defendant has failed to argue or establish that these prior convictions arose from a single criminal transaction. Therefore, defendant has failed to establish that any error occurred.

IV. Ineffective Assistance of Counsel

Defendant also contends in propria persona that the only contact he had with trial counsel before his trial was a brief meeting moments before stepping into court. Defendant asserts that he told the trial court of counsel’s inattention on several occasions and that the court should have taken action.

Absent a *Ginther*¹⁷ hearing, our review is limited to plain error on the existing record affecting defendant’s substantial rights.¹⁸ Effective assistance of counsel is presumed and defendant bears a heavy burden to prove otherwise.¹⁹ To establish ineffective assistance of counsel, defendant must prove that counsel’s deficient performance denied him the Sixth Amendment right to counsel and that, but for counsel’s errors, the proceedings would have resulted differently.²⁰ Defendant must overcome the strong presumption that counsel’s performance was sound trial strategy.²¹

Defendant contends on appeal that trial counsel failed to contact him prior to trial and failed to return his calls; however, there is no record of trial counsel’s conduct. Defendant criticized trial counsel’s performance on other grounds at his sentencing hearing. Although defendant stated that the court denied his request to replace his trial counsel in early January, there is no record of defendant’s alleged request. Defendant failed to move for a *Ginther* hearing

¹⁵ *Callon, supra* at 332.

¹⁶ *People v Whitney*, 205 Mich App 435, 437; 517 NW2d 814 (1994), citing *People v Preuss*, 436 Mich 714, 717, 738; 461 NW2d 703 (1990).

¹⁷ *People v Ginther*, 390 Mich 436; 212 NW2d 922 (1973).

¹⁸ *People v Snider*, 239 Mich App 393, 423; 608 NW2d 502 (2000).

¹⁹ *People v Rockey*, 237 Mich App 74, 76; 601 NW2d 887 (1999).

²⁰ *People v Carbin*, 463 Mich 590, 599-600; 623 NW2d 884 (2001).

²¹ *Id.* at 600.

to establish his claim, and trial counsel committed no error on the existing record. Accordingly, we find that defendant has failed to establish that trial counsel was constitutionally ineffective.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Jessica R. Cooper
/s/ Kirsten Frank Kelly